IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No . 318 of 1991
DATE OF DECISION : 29-11- 2006

Smt.Kamla Devi & others. … APPELLANTS.

Subhash & others … RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. R.A.Sheoran, Advocate,
for the appellants

Mr. Paul S.Saini, Advocate,
for respondent No.3-insurance company.

…

JUDGMENT:

This appeal is by the claimants (appellants herein) directed against award dated 10.1.1991 passed by the Motor Accident Claims Tribunal, Bhiwani.

In brief, the facts of the case are that on 25.9.1989, Satpal-deceased had gone to attend the birthday rally of Ch.Devi Lal, Deputy Prime Minister of India, in jeep bearing registration No.GCY-9820 which was being driven by Subhash,respondent No.1. While they were coming back and had reached near village Nanan, Subhash-respondent No.1 noticed a truck going ahead of their jeep. He tried to overtake the said truck but while doing so, dashed the jeep into the truck from behind, thereby causing the accident. As a result of the impact, Satpal sustained grievous injuries and later succumbed to the same. The driver of the jeep, namely, respondent No.1, Subhash, was found responsible in causing the accident

and accordingly, the dependents of the deceased Satpal, namely, his widow, a minor son and the parents, filed claim petition against him and the owner of the jeep, before the Motor Accident Claims Tribunal, Bhiwani, claiming compensation on account of death of Satpal.

On notice of the claim petition, respondents No.1 and 2 , namely, driver and owner of jeep, filed their written statement stating that the accident took place due to the negligence of the driver of the truck but since the number of the truck could not be noted down, the claimants have sued them incorrectly. Respondent no.3, i.e. insurance company, in its written statement, pleaded that since the driver of the jeep did not possess a valid driving licence, it is not liable to make any payment towards compensation.

On pleadings of the parties, issues were struck by the learned Tribunal whereupon the parties led their respective evidence.

The learned Tribunal on appreciation of the evidence so adduced by the parties before it, held that the accident took place due to rash driving of driver Subhash (respondent No.1). Since the Tribunal found Subhash-respondent no.1 to be in possession of a valid driving licence, it directed respondent no.3,namely, insurance company, to make the payment of whole compensation, which was awarded at Rs.1,92,000/- in favour of the claimants with 12 per cent per annum. Out of the said amount, 1/4th share was ordered to be deposited in the name of the minor son of the deceased, in a nationalized bank in fixed deposit while the remaining amount was directed to be paid to the remaining three claimants, i.e. widow and the parents, in equal share. Feeling dissatisfied with the quantum of compensation, the claimants have now filed the instant appeal for enhancement thereof.

I have heard the learned counsel for the parties.

Appellants have sought enhancement in compensation. The argument is that the Tribunal has erred in deducting half of the amount on account of personal maintenance and up-keep instead of 1/3rd. A bare perusal of the impugned award shows that on the basis of certain documents placed on record, the Tribunal came to the conclusion that deceased Satpal was a contractor and was at the very inception of his career. There was no documentary evidence with regard to the income of the deceased. It was

only on the basis of oral statement of Haribaksh, father of the deceased, that his son Satpal was earning about Rs.4000/- per month and used to give Rs.2000/- or Rs.2200/- per month for running the house-hold affairs, the income of the deceased was assessed at Rs.2000/- per month on hypothetical basis. The Tribunal has deducted Rs.1000/- on account of personal expenses and up-keep on the premise the deceased being a contractor must be spending on himself on a higher side by serving tea and Bidis to his customers and to the labourers as well. This observation may have some bearing on the facts of the present case but again hypothetical. It needs interference. Thus, in backdrop of the situation, Rs.800/- is assessed as the amount to be spent on personal expenses and up-keep. The deceased is claimed to be aged 26/27 years at the time of his death, which though runs counter to the age of 32 years recorded in the post-mortem report, Exhibit P-12; therefore, the multiplier of 16 so applied by the Tribunal needs no interference. The compensation is now worked out which comes to Rs.2,30,400/-(1200x12x16). Moreover, the expenses on the last rites are a natural consequence. Thus, under this heading, a sum of Rs.2600/- more is allowed to the claimants, making total compensation payable at Rs. 2,33,000/- i.e. Rs.41,000/- over and above the amount awarded by the Tribunal. Out of the enhanced amount, a sum of Rs.15,000/- each is ordered to be paid to appellant No.1-widow and appellant No.2-minor son, while the remaining amount of Rs.11,000/- is ordered to be disbursed to appellants No.3 and 4, namely, the parents of the deceased, in equal share. As regards the share of appellant No.2-minor son of the deceased, the same is ordered to be deposited in a nationalized bank in fixed deposit, payable to him on attaining majority.

Coming to the rate of interest, previously it used to be 12 per cent, however, in the recent years the bank rates have been considerably reduced and the rate of interest is being awarded at the rate of 7-1/2 per cent in view of the judgment of the Supreme Court in Tamil Nadu State Transport Corporation Limited v. S.Rajapriya and others, 2005-2) P.L.R.650. Therefore, in that back-drop of the situation, the enhanced compensation in this case shall carry interest at the flat rate of 9 per cent per annum from the date of filing of the claim petition till its payment.

In view of the above, the impugned award stands

modified in the manner indicated above. The appeal stands disposed of accordingly. No costs.

(ARVIND KUMAR)

November 29, 2006 JUDGE
JS